

STATE OF MICHIGAN
COURT OF APPEALS

ESTATE OF WILLIAM T. BEALS, Deceased, by
THERESA BEALS, Personal Representative,

Plaintiff-Appellee,

v

STATE OF MICHIGAN,

Defendant,

and

WILLIAM J. HARMON,

Defendant-Appellant.

UNPUBLISHED
July 1, 2014

No. 310231
Barry Circuit Court
LC No. 11-000045-NO

ESTATE OF WILLIAM T. BEALS, Deceased, by
THERESA BEALS, Personal Representative,

Plaintiff-Appellee,

v

STATE OF MICHIGAN,

Defendant-Appellant,

and

WILLIAM J. HARMON,

Defendant.

No. 310565
Barry Circuit Court
LC No. 11-000045-NO

Before: METER, P.J., and O'CONNELL and SHAPIRO, JJ.

O'CONNELL, J. (*concurring in part and dissenting in part*).

The loss of a young person is devastating. In this case, the loss is particularly intense, because one must wonder whether any of a myriad of differences in the chain of events could have averted William Beals's death. Considering the devastating loss to Mr. Beals's family, the majority may be correct that the fair and just result would be to allow the family to pursue their claim against defendant Harmon. This Court, however, is bound by the limitations the Legislature has placed on lawsuits against governmental employees like defendant Harmon. Those limitations explicitly preclude the family's claim in this case. For that reason, I respectfully dissent from the majority's decision on defendant Harmon's summary disposition motion.

Our Legislature has precluded lawsuits against governmental employees except under very narrow circumstances defined by statute. MCL 691.1407. Further, our Supreme Court has held that we must strictly construe the statute that defines the circumstances under which lawsuits are permitted. *Robinson v Detroit*, 462 Mich 439, 459; 613 NW2d 307 (2000). This case requires us to apply one aspect of that statute, i.e., whether defendant Harmon's conduct was "*the proximate cause of the injury or damage.*" MCL 691.1407(2)(c) (emphasis added). To apply the statute, we must determine whether a reasonable person could find that defendant Harmon was "the one most immediate, efficient, and direct cause" of Mr. Beals's death. *Robinson*, 462 Mich at 462.

The undisputed facts establish that defendant Harmon was not the one most immediate, efficient, and direct cause of Mr. Beals's death. Indeed, the majority recognizes the four key facts of Mr. Beals's death: Mr. Beals was an accomplished swimmer; he swam to the deep end of the pool; he submerged; and he did not resurface. Harmon's actions had no effect on these events. Nonetheless, the majority contends that reasonable minds could differ regarding whether Harmon could have *intervened* and *prevented* Mr. Beals's death (majority opinion, unpub op at 5). In other words, the majority recognizes that Harmon's alleged failure to intervene was part of a chain of events that resulted in Mr. Beals's death. A chain of events, however, cannot logically be the *one most direct and immediate cause* of a death, and as such cannot be the source of tort liability against a governmental employee. See *LaMeau v Royal Oak*, 490 Mich 949; 805 NW2d 841 (2011) (adopting the reasoning of Talbot, J., dissenting, 298 Mich App 153, 194-195; 796 NW2d 106 (2010)). Because defendant Harmon's conduct cannot be deemed the proximate cause of Mr. Beals's death, the trial court should have granted Harmon's summary disposition motion under MCR 2.116(C)(7).

For these reasons, I respectfully dissent from the majority's decision to affirm the trial court's denial of defendant Harmon's motion for summary disposition. I concur with the majority's decision to reverse the trial court's denial of the State's motion for summary disposition under MCR 2.116(C)(10).

/s/ Peter D. O'Connell